

REMARKS/ARGUMENTS

In the Office Action dated July 12, 2004, Claims 22-29 are pending. Claim 22 is rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2001/0052178 to Luhm. In addition, Claims 22-29 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,742,697 to McTernan, et al.

First, with regard to Luhm, Applicant respectfully traverses the rejection of Claim 22. Claim 22 recites a structural assembly including first and second structural members that are at least partially joined by a rivet, wherein the "rivet substantially comprises a refined grain structure having a grain size less than about 5 microns." Luhm, on the other hand, describes the manufacture of rivets by extrusion, and states that the "the grain size would preferably be 6 or finer in accordance with specification ASTM E 112." Paragraph 85. Applicant submits that the disclosure of Luhm neither anticipates nor makes obvious Claim 22. In this regard, Applicant is including herewith a declaration made by Ed Litwinski, one of the inventors of the present application. *See* Declaration under 37 C.F.R. § 1.132 by Edward Litwinski. As set forth in the declaration, and illustrated on the chart attached thereto, an ASTM Grain Size Number of 6 is equivalent to a grain size of about 40 microns. Thus, a grain size of 6 or finer, as disclosed by Luhm, refers to a grain size of about 40 microns or less.

A grain size of 5 microns or less is significantly finer than a grain size of ASTM Grain Size Number 6. Further, a material with a grain size of 5 microns or less would likely exhibit at least some material properties that are significantly different than the material properties of a material with Grain Size Number 6 as well as many materials with a grain that is finer than ASTM Grain Size Number 6 but not as fine as 5 microns. Further, although the range of grain size described by Luhm would include the range recited in Claim 22, the range recited in Claim 22 is not disclosed with any specificity in Luhm, and the results for a material with the grain size recited in Claim 22 would not be characteristic for the materials generally contained in the range disclosed in Luhm. Accordingly, Applicant respectfully submits that Claim 22 is patentable over Luhm.

Turning now to the rejection of Claims 22-29 as being anticipated by McTernan, et al., Applicant submits that McTernan, et al. is not prior art to the present application. In particular, McTernan, et al. issued June 1, 2004, after the present application was filed. Further, McTernan, et al. was filed on April 29, 2002. Applicant is submitting herewith a declaration by the inventors of the present invention asserting that, on or before October 23, 2001, the inventors reduced to practice the invention described and claimed in the present application. *See* Declaration under 37 C.F.R. § 1.131 by Edward Litwinski and Rahmatollah Toosky. Evidentiary attachments are included with the Declaration, including the results of tests of specimens prepared according to the present invention, color photographs of the same specimens, and an invention disclosure that was prepared prior to October 23, 2001.

In light of the Declaration, Applicant respectfully submits that McTernan, et al. does not qualify as prior art under 35 U.S.C. § 102(e) since the present invention was conceived and reduced to practice before the filing date of McTernan, et al. and therefore requests that the rejection based on McTernan, et al. be withdrawn.

Accordingly, Applicant submits that Claims 22-29 are allowable.

* * * *

CONCLUSIONS

In view of the remarks presented above, Applicant submits that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicant's undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper.

Appl. No.: 10/631,906

Filed: July 31, 2003

Page 4

However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Nicholas F. Gallo
Registration No. 50,135

Customer No. 00826

ALSTON & BIRD LLP

Bank of America Plaza

101 South Tryon Street, Suite 4000

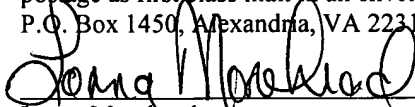
Charlotte, NC 28280-4000

Tel Charlotte Office (704) 444-1000

Fax Charlotte Office (704) 444-1111

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 18, 2004



Lorna Morehead

CLT01/4658781v1